



COMMUNITY DEVELOPMENT DEPARTMENT, PLANNING DIVISION

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## MITIGATED NEGATIVE DECLARATION

### I. DESCRIPTION OF PROJECT:

**Date:** August 4, 2009  
**APN:** 764-09-012

**Application #s:** EA 06-37, GPA 06-06, ZA 06-18

**Project Title:** Hale-Signature

**Project Location:** The approximately 30-acre project site is located between Hale Avenue and Monterey Road approximately one-half mile south of the intersection of Tilton Avenue and Hale Avenue in Morgan Hill

**Project Proponent:** Signature Properties  
Joe Zawidski  
4670 Willow Rd, Suite 200  
Pleasanton, CA 94588

**Project Description:** The project proponent proposes a General Plan amendment to change the land use designation on the site from *Public Facilities* to *Single Family Medium (3-5 dwelling units per acre)*. This will allow 90 to 150 single-family units on the site. This designation allows as many as five dwelling units per acre consisting of detached residences with minimum lot areas of 7,000 square feet. The *Morgan Hill General Plan* describes *Single Family Medium* land use areas as often providing a transition from non-residential areas to lower-density neighborhoods. For the purposes of this Mitigated Negative Declaration (MND), development at the upper range of the proposed General Plan designation, or up to 150 residential units, is assumed on the site.

The applicant has stated an objective to accommodate about 120 dwelling units on the site. Under Morgan Hill's current general plan designations and zoning regulations, density is calculated based on gross site area, and therefore the *Single Family Medium* designation and R1-7,000 zoning would be the most appropriate categories to accommodate the applicant's project objectives.

The Initial Study prepared for the proposed project was prepared at a program-level. At the time a specific development is proposed, additional environmental review will be required.

## II. DETERMINATION

In accordance with the City of Morgan Hill procedures for compliance with the California Environmental Quality Act (CEQA), the City has completed an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, the City makes the following determination:

- Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because consistency of future development with existing policies and regulations will reduce impacts to a less than significant level, and, therefore, this **MITIGATED NEGATIVE DECLARATION** has been prepared.

## III. Mitigation and Avoidance Measures:

### A. *Biological Resources*

#### **City of Morgan Hill General Plan**

Various policies in the City's General Plan were adopted for the purpose of avoiding or mitigating impacts to biological resources resulting from planned development within the City. All future development is subject to General Plan policies, including the following, which would reduce or avoid impacts to biological resources:

- *Plants and Wildlife Policy 6a* – Preserve all fish and wildlife habitats in their natural state whenever possible. Consider development impacts upon wildlife and utilize actions to mitigate those environmental impacts.
- *Plants and Wildlife Policy 6c* - Preserve outstanding natural features, such as the skyline of a prominent hill, rock outcroppings, and native and/or historically significant trees.
- *Plants and Wildlife Policy 6e* - Identify and protect wildlife, rare and endangered plants and animals and heritage resources from loss and destruction.
- *Plants and Wildlife Policy 6g* - Encourage use of native plants, especially drought-resistant species in landscaping to the extent possible.
- *Water Quality Policy 6f* – Require the protection and/or replacement of essential habitat for rare, threatened, or endangered species and species of special concern as required by state and federal law.
- *Water Quality Policy 6g* – Encourage the protection, restoration, and enhancement of remaining native grasslands, oak woodlands, marshlands, and riparian habitat.
- *Water Quality Policy 6h* – Preserve and protect mature, healthy trees whenever feasible, particularly native trees and other trees which are of significant size or of significant aesthetic value to immediate vicinity or to the community as a whole.

## **City of Morgan Hill Burrowing Owl Habitat Mitigation Plan**

In conformance with the City's Burrowing Owl Habitat Mitigation Plan, future development on the project site will be required to implement the following measures to avoid direct impacts to burrowing owls and to offset impacts to non-native grassland habitat. Implementation of this standard measure would avoid or reduce significant impacts to burrowing owls and their habitat.

- Complete pre-construction surveys to determine if burrowing owls are present within the footprint of the proposed grading area, no more than 30 days prior to initiation of any construction-related activities.
- Should burrowing owls be found on the site during breeding season (February 1 through August 31), exclusion zones with a 250-foot radius from occupied burrows, shall be established. All project-related activities shall occur outside the exclusion area until the young have fledged.
- If preconstruction surveys are completed during the non-breeding season and burrowing owls are observed on the site, the owls may be relocated upon approval of the California Department of Fish and Game once mitigation has been provided.
- A final report on burrowing owls, including any protection measures, shall be submitted to the Director of Community Development prior to grading.

## **City of Morgan Hill Municipal Code**

- Prior to the removal of any tree protected under the City of Morgan Hill Tree Removal Controls, a tree removal permit would be required from the Community Development Director which would include a description of the tree replacement program and identify any conditions imposed by the City. Tree removal may also occur without a permit if the removal will take place in accordance with an approved landscape plan. [Morgan Hill Municipal Code 12.32.030, 12.32.040, 12.32.060]
- Native trees shall be planted to replace native trees removed unless practical reasons preclude this option, as determined by the Community Development Director. [Morgan Hill Municipal Code 12.32.080(A)]
- No building shall be constructed within 50 feet of a perennial or intermittent stream [Morgan Hill Municipal Code 18.12.080(E)]. The draft Santa Clara Habitat Conservation Plan (HCP) proposes to modify this standard to a 35-foot setback from the top of the bank or outer edge of riparian vegetation. If this provision is adopted, the Municipal Code will likely be amended to be consistent with the HCP.

## **Morgan Hill City Council Policy 05-02**

In July 2005, the Morgan Hill City Council adopted an interim City Council policy that applies to new development adjacent to streams and waterways:

- *City Council Policy 05-02* - New development adjacent to streams and waterways shall be designed to preserve and integrate the waterways and associated habitats. New development should respect the water resource as an asset to the development, and shall not wall off the stream or waterway. New development shall incorporate open space buffers adjacent to waterways, in order to protect the stream and the existing/potential natural resources and habitats contained therein. Trails, pedestrian pathways and/or bikeways should be included within the open space buffer, either as reflected in the City's Park and Bikeways Master Plan or when reasonable and appropriate. Conditions of approval may be imposed to require restoration of riparian habitat, as feasible.

This policy shall apply to land adjacent to streams and waterways which have value as natural and/or recreational resources, including Llagas, West Little Llagas, Edmundson, Fisher, Tennant, Corralitos and Coyote Creeks, as well as the Madrone and Butterfield Channels.

### **Federal and State Laws and Regulations Protecting Wetlands and Creeks**

#### **Section 401 and 404 of the Federal Clean Water Act**

At the federal level, the Clean Water Act (33 U.S.C. 1344) is the primary law regulating impacts to wetlands and waters. The Clean Water Act regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Waters of the United States include navigable waters, interstate waters, territorial seas, and other waters that may be used in the interstate or foreign commerce. The Section 404 permit program is run by the U.S. Army Corps of Engineers (ACOE) with oversight from the Environmental Protection Agency (EPA). Future impacts to regulated wetlands or waters due to construction will require conformance with an ACOE permit and mitigation requirements to offset impacts. Prior to any construction activities, including filling or excavation within waters of the United States, a Section 404 permit will be obtained from the ACOE and a Water Quality Certification would be obtained from the Regional Water Quality Control Board (RWQCB). The RWQCBs were established under the Porter-Cologne Water Quality Act to oversee water quality in the State of California and the RWQCB issues water quality certification in compliance with Section 401 of the Clean Water Act where impacts to wetlands are proposed. Potential Waters of the United States on the project site include perennial wetland associated with Fisher Creek located in southwestern portion of the site.

#### **California Fish and Game Code**

The California Fish and Game Code includes regulations governing the use of or impacts to many of the state's fish, wildlife, and sensitive habitats. The California Department of Fish and Game (CDFG) exerts jurisdiction over the bed and banks of rivers, lakes, and streams according to provisions of Section 1601 through 1603 of the Fish and Game Code. The Fish and Game Code requires a Streambed Alteration Agreement for the fill or removal of material within the bed and banks of a watercourse or water body and for the removal of riparian

vegetation. Future development on the site will be required to conform to the requirements of Fish and Game Code and replacement habitat will be required where there are impacts to riparian vegetation.

### **Federal and State Laws and Regulations Protecting Migratory and Nesting Birds**

The federal Migratory Bird Treaty (MBTA; 16 U.S.C., Section 703, Supplement I, 1989) prohibits the killing, possessing, or trading of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. The trustee agency that addresses issues related to the MBTA is the U.S. Fish and Wildlife Service (USFWS). Migratory birds protected under this law include all native birds and certain game birds (e.g., turkeys and pheasants). This act encompasses whole birds, parts of birds, and bird nests and eggs. The MBTA protects active nests (i.e., contains eggs or fledglings) from destruction and all nests of species protected by the MBTA. All native bird species occurring in the City of Morgan Hill are protected by the MBTA.

#### California Fish and Game Code

All native bird species that occur on the project site are protected by the Fish and Game Code. The California Fish and Game Code protects native birds, including their nests and eggs, from all forms of take, which includes disturbance that causes nest abandonment and/or loss of the reproductive effort. Raptors (i.e., eagles, hawks, falcons, and owls) and their nests are specifically protected in California under Fish and Game Code section 3503.5. Section 3503.5 states that it is “unlawful to take, possess, or destroy any birds in the order of Falconiformes or Stringiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided in this code or regulation adopted pursuant thereto.” Future development on the project site may be required to include measures to avoid impacts to nesting birds.

#### *B. Hydrology and Water Quality*

### **City of Morgan Hill General Plan**

Many of the policies in the City’s General Plan were adopted for the purpose of avoiding or mitigating environmental effects that could result from development planned within the City. All future development is subject to General Plan policies, including the following, which will reduce or avoid hydrology and water quality impacts:

- *Flood Control Policy 4a* – Prepare for impacts associated with potential failure of Anderson Dam.
- *Flood Control Policy 4b* – Prohibit development in floodways and regulate in floodplains to minimize flood damage and be consistent with the federal flood insurance program and Santa Clara Valley Water District regulations. (SCJAP 15.05)
- *Flood Control Policy 4e* – Natural streamside and riparian areas should be left in their natural state in order to preserve their value as percolation and recharge areas, natural habitat, scenic resources, recreation corridors and for bank stabilization. (SCJAP 15.08)

- *Flood Control Policy 4f* – Minimize disruption of natural riparian areas by flood control projects needed to protect presently existing development by maintaining slow flow and stable banks through design and other appropriate mitigation measures. (SCJAP 15.08)
- *Flood Control Policy 4h* – Areas which are developed or planned for development should be protected by the construction of flood control facilities. Development should be managed through advanced planning and design standards to minimize off-site flooding and drainage problems. (SCJAP 12.00)
- *Flood Control Policy 4k* – Require developers whose proposed projects would induce downstream flooding to provide mitigation to eliminate the flood-inducing impacts of their projects. (SCJAP 12.03)
- *Flood Control Policy 4l* – If development is to be allowed in flood-prone areas, provide flood control facilities or appropriate flood-proofing prior to or in conjunction with development at developers' expense. (SCJAP 12.05)
- *Flood Control Policy 4m* – Where other mitigation measures do not solve the flooding problem, permit raising individual foundations (padding up structures) in appropriate situations; however, its use must be restricted in order to minimize the cumulative effects on adjacent areas. (SCJAP 12.06)
- *Flood Control Policy 4n* – Require mitigation of any storm water runoff produced by development that occurs beyond that described in the General Plans of the City and County as of 1982. (SCJAP 12.07)
- *Flood Control Policy 4o* – Require all local development to provide appropriate mitigation of off-site flooding impacts, including limiting runoff to pre-development levels and/or complete solutions to flooding and local drainage problems in the vicinity of the development, using such methods as detention or retention. (SCJAP 12.08)
- *Flood Control Policy 4p* – Require careful consideration of the cumulative effects of development which would drain into the upper reaches of Llagas Creek and other creeks, in order to avoid the need for channelization and consequent destruction of its riparian vegetation and natural habitat. (SCJAP 12.09)
- *Water Quality Policy 5a* – Protect water quality from contamination, and monitor it to assure the present policies and regulations are adequate. Prohibit such uses as waste facilities, septic systems, and industries using toxic chemicals where polluting substances may come in contact with groundwater, floodwaters, and creeks, or reservoir waters. (SCJAP 8.00)
- *Water Quality Policy 6g* – Encourage the protection, restoration, and enhancement of remaining native grasslands, oak woodlands, marshlands and riparian habitat.

## City of Morgan Hill Municipal Code

In accordance with Morgan Hill Municipal Code Chapter 18.42, future construction on the site will be required to comply with the City of Morgan Hill Flood Damage Prevention Ordinance, including elevation of habitable spaces above anticipated flood levels.

### C. Noise

#### Morgan Hill General Plan

Many of the policies in the City's General Plan were adopted for the purpose of avoiding or mitigating environmental effects that could result from development planned within the City. All future development is subject to General Plan policies, including the following, which will reduce or avoid noise impacts:

- *Noise Policy 7a* – New development projects shall be designed and constructed to meet acceptable exterior noise level standards, as follows:
  - The maximum exterior noise level of 60 dBA Ldn shall be applied in residential areas where outdoor use is a major consideration (e.g., backyards in single family housing developments and recreation areas in multi-family housing projects). Where the City determines that providing an Ldn of 60 dBA or lower cannot be achieved after the application of reasonable and feasible mitigation, an Ldn of 65 dBA may be permitted.
  - Indoor noise levels should not exceed an Ldn of 45 dBA in new residential housing units.
  - Noise levels in new residential development exposed to an exterior Ldn 60 dBA or greater should be limited to a maximum instantaneous noise level (e.g., trucks on busy streets, train warning whistles) in bedrooms of 50 dBA. Maximum instantaneous noise levels in all other habitable rooms should not exceed 55 dBA. The maximum outdoor noise level for new residences near the railroad shall be 70 dBA Ldn, recognizing that train noise is characterized by relatively few loud events.
- *Noise Policy 7b* – The impact of a proposed development project on existing land uses should be evaluated in terms of the potential for adverse community response based on significant increase in existing noise levels, regardless of compatibility guidelines.
- *Noise Policy 7e* – Noise level increases resulting from traffic associated with new projects shall be considered significant if: a) the noise level increase is 5 dBA Ldn or greater, with a future noise level of less than 60 dBA Ldn, or b) the noise level increase is 3 dBA Ldn or greater, with a future noise level of 60 dBA Ldn or greater.
- *Noise Policy 7g* – Noise levels produced by other noise sources (such as ballfields) shall be considered significant if an acoustical study demonstrates they would substantially exceed ambient noise levels.
- *Noise Policy 8a* – Roadway design, traffic signalization and other traffic planning

techniques (such as limiting truck traffic in residential areas) shall be used to reduce noise caused by speed or acceleration of vehicles.

- *Noise Policy 8b* – If noise barriers are deemed the only effective mitigation for development along major transportation corridors, an acoustical analysis shall be conducted to determine necessary dimensions.

### **III. FINDING**

The City of Morgan Hill Community Development Director hereby finds that the proposed project could have a significant effect on the environment; however, there would not be a significant effect in this case because mitigation measures required by existing policies and regulations (or ordinances) summarized above and described in the initial study will reduce the impacts of future development to a less than significant level.

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Kathleen Molloy Previsich  
Community Development Director

Date: \_\_\_\_\_